M'CARREN WINS BIG VICTORY

COURT SAYS ELECTION BOARD MUST APPOINT HIS MEN.

pictum of the State Convention Cannot Create a Party Organization-The Primary Law Controls, Not the Arbitrary Decision of a Handful of Bosses.

The Appellate Division of the Supreme Court in Brooklyn last evening handed down a decision unanimously reversing the decision of Justice Kelly which denied the application of Senator P. H. McCarren for a writ of mandamus directing the Board of Elections to accept his list of about two thousand election inspectors and clerks and reject those furnished by the anti-McCarren faction.

The Board of Elections by a vote of 2 to 1 shout a month ago rejected the McCarren list on the ground that the opposing faction had been recognized by the State convention as the regular party organization in Brooklyn. Justice Kelly in denying the application for a mandamus held that the action of the State convention was centrolling in the controversy. The Appellate Division held a special session on Monday to hear the appeal of Senator McCarren and spent all day yesterday in considering the briefs submitted.

There was much rejoicing last evening among the followers of Senator McCarren when it was learned that the Appellate Division had decided unanimously in his favor and that his inspectors and clerks would have charge at the September primaries, at which there is to be a hot fight between the opposing factions.

The opinions in the case are written by Justices Rich and Gaynor, and Justices Woodward, Jenks and Hooker concur Justice Gaynor, while yielding to the judgment of the majority, explains the points

upon which he thinks differently.

Justice Rich in his opinion describes the election of the relator as chairman of the executive committee of the county committee and the rejection of his list of election inspectors and clerks by the Board of Elections on the ground that the State convention had refused to recognize the group or faction which the relator repre-sented. He continues:

Section 12 of the general election law as smended provides that the Board of Elections of the city of New York and the Mayor of each other city shall on or before the first day of September of each year select and appoint election officers for each election district therein; that each political party entitled to representation may not later than the first day of July in each year file of persons, members of such party duly qual fied, to serve as election officers. The secif in any city more than one such list be sub-mitted in the name or on behalf of the same rolitical party only that list can be accepted which is authenticated by the proper officer which is authenticated by the proper office or officers of the faction or section of such party which was recognized as regular by the last preceding State convention of

contended by the learned counsel for the respondent that the State courser-tion was the arbitrator between the two factions of the party in Kings county; that its action was final and the Court is without riediction to entertain the applicat e are to deal with these questions. There is another statute that cannot be everlooked, Chapter 473 of the Laws of 1899

"the primary election law." It is "controll-ing" on the methods of enrolling the voters of the party in cities and in villages having 5,00 habitants or more, on primary elections i cities and villages, on party conventions is and for any political subdivision of the State It was held in the matter of Sheehan vi Mahon that in determining the right to authenticate lists of election officers the primary election law and section 12 of the election law must be read together as one general statutory scheme. Section 9 of the primary election law provides that "each party shall have a general committee for each county, except that in the city of New Yorl may be, in lieu of or in addition to, a general committee for each county wholly therein," and that "each county or city committee and the officers thereof shall have al the power and authority and shall perform all the duties, in respect to the nomination f officers to serve at general elections, con ferred upon the general committee, the county committee, the city committee, the executive committee, or the officers thereof, given to any party in such city or county by section 12 of the election laws "

The scheme and purpose of the primary election law was to provide for and regulate the party machinery and to prevent corrup-tion. It was intended to place responsibility for the party management and of party control of a locality in the hands of the duly

enrolled electors thereof.

There can be no doubt as to the power of the Legislature to provide a system for the regulation of the party machinery, and that is precisely what has been done by the statute under consideration. True there is an ap parent inconsistency between section 13 of the election law and section 9 of the primary isw, and the two statutes must be read to-cether and such construction placed upon them as shall give effect to the evident in-

tention of the Legislature,
tention of the Legislature,
With this rule in mind there can be bu little doubt as to what that contention was. Section 12 was originally enacted with the provise quoted in 1896, while the primary aw was enacted in 1898 and expressly repealed all acts and parts of acts inc with its provision. This operated, in my opinion (although all of my brethren do not unite in this expression), as an express re-peal of the proviso of section 12 of the election aw, notwithstanding the fact that the provis was permitted to remain as originally enacted

the subsequent amendments.

I find myself, therefore, unable to agree with the learned Justice at Special Term that the section was reenacted with the proviso after the passage of the primary law. The Legislature could not have so intended. Such a thing would have rendered the primar;

law nugatory.

Now, the primary law in section a provided: Each county or city committee and the officers thereof shall have all the power and authority and shall perform all the duties in respect to the nominations of officers to serve at general elections conferred upon the general committee, the county committee, the city committee, the executive committee or the officers thereof, given to any party such city or county by section 12 of the election law. And the same section prescribes
"All members of general committees and Assembly districts and ward committees chosen in or from cities of the first class, except as otherwise herein provided, shall be elected at the primary elections on the

be elected at the primary elections on the annual primary day of each year.

Even II in the eye of the law there was factoring. a faction or a section constituted by that body headed by Mr. Williams which was recognized by the State convention, that laction or section perforce of such recog-hition aione cannot present a list of election officers to the Board of Elections. For that officers to the Board of Elections. For that list in any event must be either authenti-

cated and filed by the chairman of the executive committee of the county committee (Section 12, Election Law) or by the committee

(Section 9, Primary Law).

But the primary law prescribed how the county committee is to be constituted, namely, by election at the primary election on the annual primary day of each year. It is not shown by the body headed by Mr. Will-iams that the list is filed by the chairman of any executive committee of a county com-mittee thus constituted or attempted to be thus constituted or attempted to be thus constituted. It surely cannot be con-tended that the recognition of a faction as regular by the State convention absolves ipso facto that body from compliance with the primary law in the constitution of stated committees. If this were so then this mere recognition of regularity might permit such body to constitute its committee in any manner

Before this body could successfully contend that it had a county committee it must have at least attempted to constitute such a committee in the manner prescribed by law.

It could have named committeemen for election on the annual primary day, and whatever the results so far as the number of votes returned, there might then have been force in their position that the faction recognized as regular by the state convention had chosen a regular Democratic county committee, which might be recognized as such com-mittee despite the fact that a majority of votes cast appeared to elect other persons, or at least they had thus compiled with the requirements of the primary law so far as

lay in their power.

This body indeed did present a ticket at he primaries for the State convention and the primaries for the State convention and succeeded in having many of its nominees declared members of the State convention despite the face of the returns; but we fail to find any satisfactory showing in the record that Mr. Delaney, who filed this list with the Board of Elections, was the chairman of the executive committee of a country general committee or represented a county general committee which was constituted or sought o be constituted in obedience to the positive rovisions of the primary law cited.

A faction stamped as regular has no pre-rogative above the law, and it must be regular in its observance of the law as well as regular within the recognition of the State conven-

The precise object of the primary law was to do away with the arbitrary power of men and apply the time honored maxim that Justice Gaynor in his opinion said

The first section of the primary law ex cludes its application from State conven-tions. If the primary law made the deter-mination of the State convention reviewable by the courts, then they could inquire as to whether factions really existed, and, if not, set at naught such determination. Con-cededly the courts had no such power prior to the passage of the primary law, and it must be conceded that they have it not now unless the primary law confers it and con-cededly it does not.

By providing that the State convention may decide between contending factions and organize and recognize one as regular, section 12 of the election law necessarily confers on the State convention power to decide what a faction is and that factions exist. The courts have no power to define a faction, or construe the said laws for the purpose of defining a faction, in order to decide that there were no factions before the State convention. That question is left now, as it always has been in this State, to the convention stelf. That the county committee of the faction or organization discarded by the State convention was regularly elected in 1807 makes no difference. The organization was outlawed, so to may decide between contending factions and ence. The organization was outlawed, so to speak, by the determination of the State convention as a whole and in all of its parts. While these are my views, they are not shared by a majority of the court, and I yield my judgment to theirs the more willingly as I expressed the same views in the case of mistrust that for that reason I may be unduly tenacious of them now.

The court gives permission for an appea to the Court of Appeals, but it is not be lieved the case can reach that tribuna before the primaries.

WHILE THE TAXICABS WAITED The Meters Measured Time That Is Mone

and the Joker Paid the Bill. A kind faced man accompanied by woman stopped at the Forty-fifth street entrance to the Hotel Astor yesterday afternoon and addressed the carriage

"Things look pretty dull in the busine line," said he as he waved his stick at a line of nine idle taxicabs. "But cheer up; sometimes you make lofs of money when you least expect it."

So saying the kind faced man disap peared inside the hotel. About an hour later, after several calls had used all of the taxicabe in immediate waiting, the chauffeurs went down to bring up the reserve machines. They found the meters register ing fleeting time at schedule rates on al the nine cabs. These meters can be switched on to register time when my ady is shopping and the carriage waits More than a dollar's time charge was

registered on each meter. Then the carriage starter remembered that before the kind faced man had ad-dressed him he had ambled before the waiting taxicabs and dabbed at each with his stick, as if pointing out to his com panion their admirable mechanism. While the carriage starter was searching the hotel the jovial stranger with the stick trotted out on the sidewalk.

"It's worth the joke, boys," said he to the threatening chauffeurs. "How much?" And he paid for the time he had had and the machines had had.

OIL CASE COUNCIL TO-DAY. Bonaparte and Assistants to Ge Over Record at Lenex.

LENOX, Mass., July 28.-Attorney-Genera Charles J. Bonaparte has arranged for a conference to-morrow with the counsel for the Government in the Standard Oil case. United States District Attorney Edwin

W. Sims of Chicago and his assistant, James H. Wilkinson of Chicago, arrived to-day at the Hotel Aspinwall, where the Attorney General is stopping for the summer.

General is stopping for the summer.

To-night Henry M. Hoyt, Solicitor-General from Washington, arrived, and Frank B. Kellogg of Minnesota, who was special counsel in the case, is hurrying here from Chicago. Mr. Kellogg is due to arrive in Pittafield to-morrow morning at 8 o'clock.

A suite of rooms has been engaged and equipped for the council. To-morrow the attorneys will review the record in the case from the first complaint to the verdict and fine and reversal.

It is expected that the attorneys will be

It is expected that the attorneys will be in Lenox for a number of days. Attorney-General Bonaparte to-day gave orders that he would not answer a telephone call during the conference except should the President call.

Sothern Files Answer in Wife's Divorce Suit RENO, Nev., July 28 .- The visit of Actor Sothern to Reno yesterday was explained to-day by the filing of an answer to Virginia Harned's divorce complaint by Sothern's counsel, Attorney Harwood. The answer was sealed. The impression here is that the answer means that Sothern will contest his wife's suit.

FRANK GOULD NOT HECKLED

COURT CUTS SHORT DEFENCE IN CRIMINAL CASE.

Mr. Gould Admits Knowing Bessie De Voe and is Not Allowed to Tell Much Else -Not Trying a Divorce Case-Mrs. Gould's Complaint Put In, Though.

The hearing of the charges against Mrs. Ben Teal and Harry S. Mousley that they were in a plan to manufacture false testimony against Frank J. Gould in the suit for divorce brought against him by his wife ended in the Tombs court at 11 o'clock last night. Magistrate Corrigan, who intimated that he would hold the defendants, announced that he would give his decision on Friday afternoon.

Frank Gould was a witness called by the defence. An effort was made to prove that he had visited the apartments of Bessie De Voe, the actress, in the Glenmore, at Fifty-fifth street and Seventh avenue, but his evidence, what little of it Magistrate Corrigan admitted, was of no value to anybody. The Magistrate ruled that he would not allow the divorce suit to be tried in the police court and said the only thing he would let the defence show was that Mabel MacCausian, the chief witness for the prosecution, was in the De Voe apartments at the time named in the affidavit she was to sign and saw Mr. Gould there. The defence couldn't prove that, and Magistrate Corrigan held that it didn't make any difference whether or not Mr. Gould was ever in the De Voe apartment so long as Miss MacCausian didn't see him there and was asked to

swear that she did. In the course of the proceedings the com plaint in the action brought by Mrs. Gould against her husband was admitted in evidence. It accuses him of improper con-duct with women in a disorderly house at North Sydney, Cape Breton, when he was there in June, 1908, on his yacht Helenita. on Mrs. Gould's lawyers on Friday his answer, which is a general denial of the

Mr. Gould divided attention with Berry Wall and a lot of women sightseers. He was not called as a witness until 10 o'clock last night. Herbert C. Smyth, of counsel for Mousley, the detective, called him. At the same time the lawyers for the defence said that they had been trying hard to subpose Bessie De Voe but couldn't find her. They thought the District Attorney might get her for them, but he wouldn't, Then they decided that under Magistrate Corrigan's rulings her testimony wouldn' be admissible anyway and they gave i up after making many speeches.

Mr. Gould was asked if he was famili-

with the testimony that Miss MacCauslan saw him in March in Miss De Voe's apartments. He said that in a general way

"Do you know Miss De Voe?" he was asked. Assistant District Attorney Hart objected, but Magistrate Corrigan over-

"Yes, I know her," he said. "You knew her in March last?" "Yes," he said.

You were in Miss De Voe's apartment March last!" Mr. Smyth asked.

That was the beginning of the fight by the District Attorney's office to keep ou Mr. Gould's testimony. Mr. Smyth contended that if it were true that Mr. Gould was in Miss De Voe's apartments and Mis MacCauslan saw him there it would go to prove that the statements in her affiday were true and that no false testimony had been prepared. Mr. Smyth protested against Magistrate Corrigan giving any more protection to Mr. Gould than to a de tective. The Magistrate said that Mr myth need not worry about that.

"Have you any objection to stating whether you were in Miss De Voe's apartments in March?" Mr. Smyth asked of Mr.

There was another objection from Mr Hart, which was sustained by Magistrate Corrigan. All questions as to whether Mr. Gould was in the Glenmore apartments in farch or whether he objected to telling bout it were ruled out.

"Your Honor is bound to protect the wit ess whether he desires your protection or not?" asked Mr. Smyth. "I am here to keep the case within the

issues," said the Magistrate.

Mr. Smyth said that if he could show that
Miss De Voe had told Mousley that Gould was in her apartments in March it would go to show that Mousley believed that the affidavit Miss MacCauslan made was true. Magistrate Corrigan said he could not see that it had any bearing on the charge and then Mr. Gould was asked if he had ever heard of Mousley He said he had not until he read of Mousley's arrest in the newspapers. He denied that Miss De Voe had told him on the night of the arrests of the arrest of

Mr. Smyth called a negro elevator boy at the Glenmore, who was asked to see if he could pick out Mr. Gould in the court room. Mr. Gould was asked to stand up, but he wouldn't and the Magistrate wouldn't order him to. So they walked the negro around in front of Mr. Gould The boy said he didn't know him. That

ended the case of the defendants. District Attorney Jerome was in court and made a very definite statement to Magistrate Corrigan that he would oppose any effort to try the Gould divorce case there. He added that if the lawyers went too far he would take the case away from the Magistrate and put it before the Grand Jury at once.

GATES TO SPEND A MILLION On the Best Possible Golf Links at His

Home at Port Arthur, Tex. GALVERTYN, Tex., July 28.-John Gates has contracted for the construction of fine golf links at his home at Port Arthur, Tex. Work has been commenced on the tract, embracing 750 acres of land. The new links will represent an expenditure of nearly \$1,000,000, including the cost of land,

\$100,000.
Plans of celebrated links of the world have been studied and an agent of Gates toured Europe and inspected the best links. A clubhouse costing about \$100,000 is to he erected, and Gates, who is now in Europe is gathering data for the successful operation of his links.

Lackawanna Management Refuses to Re-

eede From Disciplinary Dismiss SCRANTON, Pa., July 28 .- Members of the witchmen's union have decided by a poll that they are in favor of a strike unless the two men who were discharged by the Lackawanna at Buffalo some time ago for refusing to obey orders are reinstated. The company is determined to maintain discipline, and unless the board of adjustment for the union will back down a strike

affecting the entire system of the Lacka-wanna Railroad will be declared. Grand Master Hawley, who came to this city from Buffalo to take charge of the negotiations, said to-day that a settlement may yet be effected. The company is willing to grant nothing, saying that within a day it can get enough men to fill the places of the strikers three times over, as there are thousands of men in the country who are out of work.

When the train arrived from Buffalo this afternoon the president of the union, the grievance committee and the board of adjustment went into advisory session. They had not expected the result of the vote and are at their wits' ends.

Every effort to avoid extreme action is being made by the union officials, but if the company will grant nothing, as now seem probable, only one thing is left for Presi-dent Hawley to do; and that is to declare a

ADMIRAL COWLES TO RETIRE. He Goes on the List on August 1-Prestdent's Brother-in-Law.

WASHINGTON, July 28.—Rear Admiral William Sheffield Cowles, President Rocceveit's brother-in-law and chief of the bureau of equipment of the Navy Department, will be placed on the retired list on August 1. Admiral Cowles now is attending the tercentennial ceremony in Quebec as the representative of the United States Navy. Since February, 1906, he has been chief of the bureau of equipment. After his retirement he will continue to hold this

Admiral Cowles was born in Farmington, Conn., on August 1, 1846, and was graduated from the Naval Academy with the class of 1867. From 1891 to 1892 he served in Washington as naval aide to the Secretary of the Navy in charge of militia affairs. He was naval attaché at the American Embassy London from 1863 to 1897. In the Spanish war Admiral Cowles, then

a Lieutenant Commander, commanded the gunboat Topeka, which captured Nipe after exchanging 'a few shots with the Spanish runboat Jorge Juan, which was anchored n the bay. From 1899 to 1903 he was assistant chief of the bureau of navigation and naval aide

to President Roosevelt. He commanded the battleship Missouri from 1906 to 1906. When he was in command of the Missouri in 1904 a powder explosion in the turnet of the bat-tieship off Pensacola killed five officers and twenty-nine men. The explosion was a by a flareback during target practice ion was cause

CURE YOURSELF, DR. WILEY, Apparently You Have Been Eating Too Much for a Summer Meal.

WASHINGTON, July 28 .- They are telling ne on Dr. Wiley, chief of the bureau of chemistry of the Agricultural Department. The doctor is recognized as about the most learned in the world on foods. What is good and what is bad to eat has been the he has been making practical experime for the Government in order that all of the people of the United States might know what to eat to gain red blood and muscle. On summer diet Dr. Wiley has been in sistent and he has been issuing a bill of

fare and regimen guaranteed to make the individual immune from heat and hot weather disorders. Here was one formula: "Rat one-fourt! less in summer than in winter. Banish al

alcoholic beverages. Eat largely of cooked fruits and vegetables. Drink nothing below 60 degrees in temperature and drink sparingly. / Be careful to seek the society of cheerful friends. Practice moderation in open air exercises. Don't fret. Don't

One of the most veracious men in Wash ington discovered Dr. Wiley alone at dinne in an eating house famous for its spec and this is what he said Dr. Wiley had for "Two large imperial crabs. One large

steak and trimmings. A special salad. Some mugs of musty ale." In one of his recent bulletins Dr. Wiley

*Thousands of people are made sick in summer because they do not give though to what they eat."

WOMEN DROWN AT MINNEWASKA Two of Three in a Boat Party Sink After

LAKE MINNEWASKA, N. Y., July 28,-Mrs E. F. Bailey of Brooklyn and Mrs. A. B. Downs of Norwalk, Conn., were drowned to-day in the lake here. With Mrs. L. Ledyard of New York city, a daughter of Mrs. Downs, they were padding along the irregular shore. One of the party leaned over to pick some blueberries on

the bank and the boat capeized. Mrs. Ledyard clung to the edge of the Her mother and cousin were drowned Mrs. Ledyard tried to catch the hand her mother, but before she could reach it Mrs. Downs sank. The bodies of Mrs Bailey and Mrs. Downs did not rise to the surface.

Life guards and others could not fin the bodies until fifteen minutes had passed Then they were recovered by Daniel Bird sell, a student at Haverford College, and Frank Andrews of Wesleyan, employee at the lake.

Edward F. Bailey, whose wife was one of those drowned, is a member of the firm of Tuttle & Bailey, manufacturer of ventilators and steam heating apparatus at 83 Beekman street. Mr. Bailey left his home at 176 Harrison street, Brocklyn, yesterday morning to join his wife, Besides Mrs. Downs and Mrs. Ledyard in the party was Mrs. Walter S. Bailey. No word was received from Mr. Bailey last night at his home in Brocklyn. The party of women left New York four weeks ago for Dalton, Mass., and stopped on the way at the lake.

The North German Lloyd steamship Kronprinzessin Cecille, in yesterday, beat her own best westward run from Cherher own best westward run from Cher-bourg and exceeded in speed average any other German liner affoat, including the crack of the Hamburg-American Line, the Deutschland. She came over the long course of 3,142 miles, covering it in 5 days, 15 hours and 28 minutes, at an average of 33,21 knots.

SWITCHMEN VOTE TO STRIKE. MANAGERS OF NEW THEATRE

WINTHROP AMES. LEE SHUBERT AND JOHN CORBIN

Director, Business Manager and Literary Manager Respectively - The First Named a Bestonian Who Has Been Abread-The Company Not Selected.

The founders of the New Theatre, which aims to be as near as possible a national theatre, announced yesterday the men who will form the executive staff of the theatre. These are Winthrop Ames, director; Lee Shubert, business manager, and John Corbin, literary manager.

Mr. Ames is a native of Boston, a graduate of Harvard and for many years a student of European and American stagecraft. With Lorin F. Deland, he leased and operated for four years, winter and summer, the Castle Square Theatre in Boston, which he ran as a stock company theatre. "Its aim was popular rather than artistic." the official notice says, "yet it soon achieved the reputation of being the best theatre of its kind in the country.

Mr. Ames has spent a year abroad, and in the course of his investigation of theatre construction he studied more than sixty European theatres and opera houses. He had bought a site and had plans drawn for his proposed theatre in Boston, but postponed that project to assume the di-

rectorship of the New Theatre.

Lee Shubert, the businesse manager is well known as senior member of Shu bert Bros. The official notice names many of the Shubert theatres and Shubert stars. It is announced that his connection with the New Theatre is entirely separate from

the enterprises of his firm.

Mr. Corbin, a graduate of Harvard, studied in Balliol College, Oxford, and was subsequently an instructor at Harvard. He has done much work as a dramatic critic and a contributor to magazines and has published two novels, "The Cave Man" and 'On the Ragged Edge."

The founders also made definite an-nouncement of the policy and method of management which is to be undertaken. In its prime object, that of being an America theatre for American plays and as an agent more for the amusement of the public called "advanced" thought, the New Theatre is to be unique in that it will pay no profi to its owners, but profit itself by every accretion over and above the cost of running expenses. The financial scheme is out-lined officially by the directors as follows:

"A low annual rental is set upon lar and building, and this the theatre will be required to earn in addition to running expenses. All funds over the gross cost of conducting the theatre are to be turned expenses. All funds over the gross cost of conducting the theatre are to be turned back to the further development of the enterprise. By this spheme the foundershops to shield the new playhouse from the danger of sacrificing quality to profit on the one hand, and from the equally to be unned fault of breaking from publi opinion in self-sufficiency of policy.

As to the nature of the productions the announcement of the founders is only general. The theatre will attempt to include in its repertoire the best work of but since its chief aim is to build up a nativ American stage every effort will be made to secure the works of American play writers. The founders do not hesitate to say that an insensible effect that they hope to bring about will be the encouragemen and training of American playwrights.

A reading committee, composed of competent, broad viewed and experienced men, is to be formed, and every play submitted to the theatre will have a prompt and careful reading. As the committee hasn't been selected yet authors are re quested to keep their manuscripts at hom

for the present. In order to make the New Theatre always an attraction its management will presen plays on the "repertory system." Instead of running one play for hundreds of nights, popular though it may be, the New Theatre will have several plays in production at the alternation. By this method the theatre will be able to present from ten to fiftee plays in a season without cutting short the runs of those that prove popular suo

No announcement has been made yet o the personnel of the first company that will be engaged for the new playhouse and no date for the opening has been set Although the management promises that there will be stare, the one actor basis i not the one the theatre is going to work upon. No performer will be allowed to overshadow others in the built up of shadow others further than personal that a company may be built up of such calibre that plays may be produced to their

full acting capacity in every part.

"It is not within the range of possibility that a company of the highest order on be created at once," says the statement of the founders, "but it will be possible to institute from the beginning a company capable of thoroughly artistic and coopera

One innovation which the projectors o the New Theatre hope to be popular is the production of opera comique. One evening and possibly one matinée a week will be given over to lighter opera, which will be rendered by the singers of the Metropolitan Opera Company. Such operas as would be unsuited to the larger audiences in the Metropolitan Opera House will be pre-

SAVES SWIMMER ON HORSEBACK. Policeman and His Mount Breast the Coney

Island Surf. Fred McClellan, 20 years old, of 89 Lex ington avenue, Manhattan, was taken with cramps while awimming off the foot of Ocean Parkway, Coney Island, yesterday. Mounted Policeman Carty rode his horse into the surf and swam the animal out unti he was near McClellan, then slid off and caught the drowning man.

Then calling to his horse to follow, the

policeman brought McClellan in uncon-scious. McClellan went to the Reception Hospital and will recover. Half an hour before this Joseph Tompelio

Half an hour before this Joseph Tompello, 24 years old, of 855 Kent avenue, Brooklyn, trying to swim from Brighton Beach, became exhausted at the same spot, 200 yards out, and shouted for help. Mounted Policeman Herman J. Grabau of the Coney Island station jumped off his horse and, swimming out, brought Tompello in. Tompello was in pretty bad shape when taken to the Reception Hospital, but was brought around.

BODY MAY BE CORNISH'S.

Man Found Murdered in Grayeseud Bay Identified as That of Molineux Witness. Charles Crane, an employe at Dream-land, last night saw the body of the man found in Gravesend Bay on Sunday after-

noon, which was taken to the Coney Island Morgue, and said it greatly resembled Harry S. Cornish, the chief witness against Roland B. Molineux. Crane said he hadn't seen Cornish since the trial, at which time he was engaged to watch one of the jury-

Cornish, it was explained, was president the New York Liquid and Dispensing Machine Company, which has a concession in Dreamland, and went there frequently. He hasn't been seen there for several days.

Coroner's Physicians Turner and Fry made an autopsy on the body last night and decided that the man had been murdered. Death apparently had been caused by a blow on the back of the head with an axe. The physicians thought the man was dead before he struck the water.

The inquest will be held Friday night.

GILCHRIST TO BE DROPPED.

Brooklyn Republican Senator Who Voted Against Race Bills Won't Be Renominated. Senator Alfred J. Gilchrist of the Tenth district in Brooklyn, one of the Republican Senators who voted against the racetrack bills at both the regular and extra sessions. wants to go back to Albany, but most of the Republican managers in the district are opposed to his renomination. Gilphrist's friends say that if he is set aside and will have the support of all the opponents of the racetrack legislation in the district, regardless of party considerations. It is understood that the church and civic organizations of the district have

notified the Republican managers that they will put up a vigorous fight against Gil-christ should he be renominated. Former Alderman Charles Alt stands the best chance to get the nomination.

LIPTON ENTERTAINS OLYMPICS. Trip for Americans Around the Isle of Wight on the Erin.

Special Cable Bespatch to THE SUN.
SOUTHAMPTON, July 28.—Sir Thomas Lipton entertained to-day the American Olympic committee and such of the American athletes as remain in the country. They came down from London and

embarked on the yacht Erin for a trip around the Isle of Wight and incide to see the yacht races that were held in the Solent in connection with the Olympiad. The Americans had luncheon and dinn on board the Erin.

CHINESE PROBLEM IN FUTURES Agitates Liner's Passeagers Until an Im-

Aboard the Ward liner Havana, in yes-Aboard the Ward liner Havana, in yesterday from Havana, were twenty-five Chinese, including Wan Lu See, his wife and three children. Mrs. Wan Lu See was a subject of some speculation on the part of some of her fellow passengers. The surgeon of the immigration bureau said that she might have a baby born in America while she was on her way over-land to Canada, and the problem to the speculative passengers was: child be an American citizen?

An immigration inspector said it was no problem at all. He said all foreign folk in transit from one foreign place to in America were regarded just as they would be if they were on fcreign soil. and their children were the same as foreign born. It was different if the foreigners were immigrant of the United States. immigrants bound for a part

RESPECT FOR NAVY UNIFORM. New London Dance Hall Managers Have

Change of Heart. WASHINGTON, July 28 .- New London dance hall managers have had a change of heart toward Uncle Sam's sailors since the Navy Department gave them a join for disrespect to the naval uniform. of the dancing pavilions denied admission to enlisted men of the navy and the Navy Department asked that some reparation

be made promptly. Assistant Secretary of the Navy Newberry said to-day that the dispute had been adjusted amicably. He made public the following letter, which he sent to Commander Benson of the Naval Academy practice

"I transmit herewith for your information copies of correspondence concerning the discrimination against enlisted men in uniform at New London, Conn., and in view of the position now taken by the proprietors of the place under consideration it has been decided that the ships will continue to visit New London, as provided for in the itinerary approved in June."

SNUB FOR BERESFORD'S FOE. Sir Percy Scott Sidetracked in Command of Holiday Squadron.

Special Cable Desputch to THE SUN.
LONDON, July 28.—In view of the recent naval squabble, which has not yet been composed, there is much interest here is the announcement that Rear Admiral Sir Percy Scott has been appointed to the command of a small squadron of armored orulaers, which will visit South Africa in the autumn on the occasion of the conver tion for the Federation of the South African

Colonies.

Rear Admiral Adair will replace him as commander of the first cruiser squadron, which, under ordinary circumstances, Rear Admiral Scott would have continued to command until July 1, 1809. Inasmuch as the latter's new appointment, although honorable, is not a promotion, it is assumed in some quarters that censure of Admiral Scott's attitude against Admiral Bereaford is implied.

is implied.

Coincidentally, it is rumored in the lobbies of the House of Commons that Admiral Beresford has requested the Admiralty to relieve him of his own sommand at an

HERRON TO DIE IN SEPTEMBER. Man Who Killed Mr. Prickitt at Metuchen Quickly Convicted.

NEW BRUNSWICE, N. J., July 28 .- Archi

bald Herron, who shot and killed the Rev Samuel B. D. Prickitt of Metuchen on July Samuel B. D. Prickitt of Metuchen on July 15 at Metuchen, was found guilty of murder in the first degree to-day by a jury which heard the first evidence in the case yesterday. Justice Bergen sentenced him to be put to death in the week of September 7. Notwithstanding that the murderer's defence was insanity, Judge Cowenhoven, his counsel, this morning called him to testify in his own behalf. Herron refused to do this and said that he would have absolutely nothing to do with the case. Mrs. Herron falled to come to the aid of her husband, so the experts' testimony was not corroborated and Prosecutor Berdine did not have to introduce rebuttal.

HEARST MEN NAME HISGEN

AT CONVENTION WHERE BRYAN'S NAME CAUSES RIOT.

Man Who Tried to Present Nebraskan for President is Thrown From Platform and His Clothes Torn in the Scrap That Followed-The Platform Adopted.

CHICAGO, July 29 .- The national convention of the Independence party nominated Thomas L. Hisgen of Massachusetts for President at 12:40 A. M. The nomination

The first ballot resulted:

Hisgen, 396; Graves, 213; Howard, 200; Lyon, 71; Hearst, 49.

gation and told it to withdraw Graves. Virginia broke from Graves and put him within a few votes of success. Then came Washington with ten votes for Hisgen and he was nominated. The third ballot resulted: Hisgon, 831; Howard, 88; Graves, 77; Hearst, 2 His nomination was then made

The ticket was completed by the nomination of John Temple Graves of New York for Vice-President.

CHICAGO, July 28 .- The name of William Jennings Bryan almost caused bloodshad at the convention of Hearst's Independence party at Orchestra Hall to-night.

who dared to put in nomination the Nebraskan, was pulled bodily from the stage. and it took twenty policemen to prevent the mob of angry delegates from doing him personal violence and keep back the Hearst "wrecking crew," who attempted to attack him.

As it was, one aged delegate in the front row of the New York delegation raced up the platform steps in an attempt to his Sheppard with his cane, but was stopped by the police.

As Sheppard was dragged down the aisle another delegate forced his way through the line of police and tore Sheppard's badge from his breast. All through his short speech the delegates hooted and hissed, and finally, when he admitted that he was about to nominate Mr. Bryan, the cries of "Put him out!" and "Down with him!" turned the angry delegates into a

Chairman Walsh ruled the nomination of Mr. Bryan out of order because Mr. Bryan is a Democrat, and then Mr. Sheppard was dragged off the platform.

By this time the police had sent in a call difficulty that they kept Sheppard from serious injury. Men struggled with the police to reach him and shook their fists as

Circulation Manager Max Annenberg, fou their way to the man, but the police held them back One man got through the ranks far

enough to tear off Sheppard's badge, before they could do more the police had dragged him to the street and escorted him to his hotel. The violent passion of the mob of delegates

Independence party was "but a sweet blue eyed babein its perambulator."

nating speeches which were still in progress at midnight, with every pospect that Thomas L. Hisgen of Massacl M. W. Howard of Alabama would be the

The names of Hisgen, Howard and John

Temple Graves had been presented and the rollcall of States had proceeded to Kansas. Here Mr. Sheppard saked and got recognition for the apparently harmless

nated here who does not belong to this party.

Chairman Walsh could say: "That question has not yet arisen. No such ruling has been made. There is no steam roller and no stonecrusher here. This convention is only a little sweet, blue-

William H. Taft and the Republican party. Then he started in to praise the Demo-eratio party and its candidate, but not by name

But he only got far enough to say: "This Democratic candidate has the best chance

the stranger off his feet. Finally order was secured, but a minute later the speaker again launched into a culogy of Mr. Bryan.

one shouted from a topmost gallery seat: "Three cheers for Bryan!"

followed them, but it was all in vain. Then there finally came a lull. Charles H. Mitchell of Illinois won the recognition of the Chair with a point of order that Mr. Sheppard had no right to nominate Mr.

came on the third ballot.

The second ballot was: Hisgen, 590; Graves, 189; Howard, 109; Hearst, 49. Andy Lawrence and Fred, his brother city editor of the Examiner, stampeded the convention to Hisgen at a prearranged signal Andy called to the Georgia dele-

unanimous.

J. I. Sheppard, a delegate fom Kansas,

frantic mob.

for the reserves and twenty men in uniform dashed up the middle aisle to prevent violence. It was only with the greatest

The famous "wrecking crew" of the Hearst circulation department, led by

was a strange commentary on the announce-ment which Chairman Walsh had made when everything was still peaceful, that the

Then came a squall that gave the lie to this cheerful description.

The outburst was the climax of the nomi-

Presidential and Vice-Presidential nominees respectively.

Everything had gone quietly until Mr. Sheppard burst into the glare of the lime-

Before 1 speak for Kansas I want to ask about the ruling the chair made this afternoon, that no candidate can be nomi-

The delegates seemed to scent a Bryan plot and it was several minutes before

eyed baby in a perambulator. By that time Mr. Sheppard was on the stage and launoned into an inventive against

A storm of hisses broke loose that swept

This time the gallery audience burst into a tempest of cheers that effectually drowned out the hisses from the delegates. There was no doubt that the gallery wanted Bryan and that the delegates did not. But the audience wanted to rub it in, so some

They were given, despite the frantic shouts of the sergeant at arms and Chairman Walsh's splintering work with his gavel. He threatened to clear the galleries, but no one heard him. He sent detectives and assistant sergeants at arms to the galleries and a score of policemen

Bryan. But how do we know that the delegat